

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR07-1111

March 19, 2008

LARRY ROWLAND MASSEY, JR.
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[CR-04-194A, CR-04-229A]

HONORABLE CAROL CRAFTON
ANTHONY, JUDGE

AFFIRMED

In this appeal from the revocation of a suspended imposition of sentence, appellant, Larry Massey, Jr., argues that the trial court erred in finding that he violated the terms and conditions of his suspended imposition of sentence. We affirm.

In October 2004, Massey was found guilty of theft of property and fraudulent use of a credit card and was sentenced to twenty months in prison, with an additional sixty-month suspended imposition of sentence. In February 2007, he was found guilty of residential burglary and theft of property and was sentenced to thirty months in prison, with an additional sixty-month suspended imposition of sentence. The State filed petitions to revoke Massey's suspended sentences in March 2007, alleging that he had violated the terms of his suspended sentences by committing the offense of sexual assault in

the second degree. After a hearing on June 18, 2007, the trial court found that Massey had violated the terms of his suspended sentences, revoked them, and sentenced him to sixty months in the Arkansas Department of Correction in each case, with the sentences to run consecutively.

At the revocation hearing, Samantha Green, the mother of Massey's child, testified that in December 2006, she went with Massey to see his house. Green stated that she left her car running because she did not intend to be there long; however, after Massey showed her around the house, he asked her to sit down. Green said that Massey bent down in front of her and began trying to talk her into "being with" him and telling her that he loved her. Green refused Massey, explaining to him that she did not want to have anything to do with him except to be friends for their daughter's sake. Green said that Massey kept touching her face, holding her down on the sofa, holding her arms down, leaning on her, and trying to kiss her. Green said that she told Massey to stop but that he kept forcing himself on top of her, putting all of his weight on her, ripping her clothes, and pulling her pants and underwear down. Green said that she "hollered" at Massey to "get off her" and that "he was gonna regret this" and that he told her if she hollered any louder he would hit her in the face. Green said that Massey kept trying to get her to have sex with him and she kept refusing, but that he touched her in her "private area" and that she was afraid that he would hit her if she tried to stop him. According to Green, Massey locked his legs around her and made her watch him masturbate until he ejaculated into his hand. Green said that after she took Massey back to his car, she went to the police

department and made a report; she also sought and obtained an order of protection against Massey. On cross-examination, Green testified that she and Massey were getting along until that night, and although she was afraid, she continued to threaten Massey that night because she did not think that he would hurt her.

Massey testified in his own defense, stating that on the night Green took him to his house, they began kissing and were about to have sex when he made a rude comment regarding Green and another paramour, and Green told him to get off of her. Massey said that he got mad and began “cussing” Green, but he denied ripping any of her clothing, masturbating, or ejaculating in front of her. Although he admitted that he had threatened to hit Green, he said he would not have done it, and that there was no sexual contact that was against Green’s will.

A trial court may revoke a defendant’s suspended sentence at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his suspended sentence. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In a hearing to revoke, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the trial court’s findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* The appellate courts defer to the trial court’s superior position to determine credibility and the weight to be accorded testimony. *Id.* In order to revoke a suspended sentence, the State need only prove one violation. *Id.*

A person commits sexual assault in the second degree “if the person engages in sexual contact with another person by forcible compulsion.” Ark. Code Ann. § 5-14-125(a)(1) (Repl. 2006). “Sexual contact” is defined as “any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.” Ark. Code Ann. § 5-14-101(9) (Repl. 2006).

Massey argues that the State failed to establish that he made sexual contact with Green’s sex organs, buttocks, anus, or breast, as required by the statute, because Green only testified that Massey touched her “private area,” without further definition. Green did testify that Massey touched her private area, and then he held her down with his legs and masturbated to ejaculation. However, it is clear from Green’s testimony what she meant by “private area,” and it is equally clear that Massey was doing so for the purpose of sexual gratification. Contrary to Massey’s assertion, the trial court’s finding that he violated a condition of his suspended sentence is not clearly against the preponderance of the evidence.

Massey further argues that Green’s version of events was not credible. However, this court defers to the trial court’s assessment of witness credibility. *Stultz, supra*.

Affirmed.

GLADWIN and VAUGHT, JJ., agree.